

THE HONORABLE RICARDO S. MARTINEZ  
THE HONORABLE THERESA L. FRICKE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES, INC.,

Defendant.

Case No. 2:21-cv-00799-RSM-TLF

**STIPULATED MOTION TO EXTEND  
MEDIATION DEADLINE AND  
ORDER**

**NOTE ON MOTION CALENDAR:  
June 29, 2022**

## I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Civil Rules 7(d)(1), 10(g), and 16(b)(6), Plaintiff Uthervers Gaming LLC (“Plaintiff”) and Defendant Epic Games, Inc. (“Defendant”) submit this stipulated motion to request that the Court extend the current June 30, 2022 deadline for mediation, as set forth in the current Case Schedule, ECF No. 48, until a date that is sixty days after the issuance of a claim construction ruling. This limited extension will not impact any other Case Schedule deadline, including the existing dispositive motion deadline of March 2, 2023.

Good cause exists for this minor adjustment to the case schedule because the parties agree that resolution of disputed claim construction issues is necessary to facilitate productive mediation.

## II. BACKGROUND

### A. Existing Case Schedule Deadlines

Under the existing Case Schedule, mediation is to be completed by June 30, 2022; the claim construction hearing is set for August 16, 2022; disclosure of opening expert witnesses’ reports is due November 3, 2022; disclosure of rebuttal expert witnesses’ reports is due December 1, 2022; discovery is to be completed by February 2, 2023; and the last date to file and serve dispositive motions and *Daubert* motions is March 2, 2023.

### B. The Parties Jointly Request Extending the Deadline for Mediation, With No Impact to Any Other Case Schedule Deadline

Plaintiff and Defendant have jointly agreed to request that the Court extend the current June 30, 2022 deadline for mediation, until a date that is sixty days after the issuance of a claim construction ruling. This extension will not impact any other existing deadlines under the Case Schedule, including the existing dispositive motion deadline of March 2, 2023.

## III. ARGUMENT

### A. The Court May Modify the Case Schedule for Good Cause

The Federal Rules of Civil Procedure and Local Rules provide that a case schedule may be modified for good cause and with the judge’s consent. Fed. R. Civ. P. 16(b)(4); LCR 16(b)(6). “In

determining whether ‘good cause’ exists under Federal Rule of Civil Procedure 16(b) to modify a case schedule, the court ‘primarily considers the diligence of the party seeking amendment.’” *Doe v. Trump*, 329 F.R.D. 262, 272 (W.D. Wash. 2018) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). “Good cause” exists “when the deadline in the scheduling order ‘cannot reasonably be met despite the diligence of the party seeking the extension.’” *Id.*

#### **B. Good Cause Exists to Extend the Deadline for Mediation**

Plaintiff and Defendant each assert that they have diligently prosecuted and defended this case. The parties have exchanged written discovery requests and responses, are engaged in fact discovery, including third-party discovery, and continue to produce documents to each other. The parties have also served patent contentions, exchanged claim construction disclosures, and have completed claim construction briefing in accordance with the Local Patent Rules and the Case Schedule. The parties conferred about the prospect of mediation prior to resolution of the disputed claim construction issues, and the parties agree mediation would not be productive until those issues were resolved. Notably, the current June 30, 2022 mediation deadline comes from the parties’ proposal in a September 18, 2021 joint status report, in which the parties contemplated a mid-June 2022 claim construction hearing, which was ultimately set for August 16. Dkt. 43 at 5-6, 8; April 28, 2022 oral order.

Under the circumstances, good cause exists to extend the deadline for mediation until a date that is sixty days after the issuance of a claim construction ruling. The extension will allow the parties to continue working on discovery while conserving their mediation efforts until a time when they will be most productive. The extension will not result in a delay of any of the other case deadlines.

### **IV. CONCLUSION**

For the foregoing reasons, the parties respectfully request that the Court extend the current June 30, 2022 deadline for mediation until a date that is sixty days after the issuance of a claim construction ruling, consistent with the Proposed Order accompanying this Motion.



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2 Dated: June 29, 2022

By: *s/ Eugene Novikov*

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11  
12 Dated: June 29, 2022

By: *s/ Christina McCullough*

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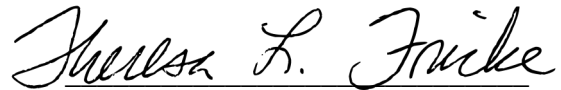
17 *Attorneys for Defendant Epic Games, Inc.*

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**ORDER**

**PURSUANT TO THE FOREGOING STIPULATION, it is ORDERED** that the June 30, 2022 deadline for mediation is reset to the date that is sixty days after the issuance of a claim construction ruling. All other provisions of the Case Schedule remain in effect.

DATED this 30<sup>th</sup> day of June, 2022.



HON. THERESA L. FRICKE  
UNITED STATES MAGISTRATE JUDGE

**CERTIFICATE OF SERVICE**

On June 29, 2022, I caused to be served the foregoing document(s) in the manner described below:

**STIPULATED MOTION TO EXTEND MEDIATION DEADLINE AND  
[PROPOSED] ORDER**

to be served on the following parties as indicated below:

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8 **COUNSEL FOR DEFENDANT**  
9 **EPIC GAMES, INC.**

10 I declare under penalty of perjury under the laws of the United States of America that the  
11 foregoing is true and correct. Executed June 29, 2022.

12 By: /s/ Tricia Northgrove  
13 Tricia Northgrove  
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